

1
2 SEC. ____ . SITING OF INTERSTATE ELECTRIC
3 TRANSMISSION FACILITIES.

4 Section 216 of the Federal Act (16 U.S.C. 824p) is amended—

5 (1) by striking subsections (a) through (c) and inserting the following:

6 “(a) Definitions.—In this section:

7 “(1) ERCOT.—The term ‘ERCOT’ means the Electric Reliability Council of Texas.

8 “(2) HIGH-PRIORITY NATIONAL TRANSMISSION PROJECT.—The term ‘high-priority national
9 transmission project’ means an overhead or underground transmission facility, consisting of
10 conductors or cables, towers, manhole duct systems, phase shifting transformers, reactors,
11 capacitors, and any ancillary facilities and equipment necessary for the proper operation of
12 the facility, that—

13 “(A)(i) operates at or above a voltage of 345 kilovolts alternating current;

14 “(ii) operates at or above a voltage of 400 kilovolts direct current; or

15 “(iii) is a renewable feeder line that transmits electricity directly or indirectly to a
16 transmission facility that operates at or above a voltage of 345 kilovolts alternating
17 current or 400 kilovolts direct current; and

18 “(B) is included in a regional plan pursuant to [subsection (h)(3)(A)?].

19 [“(3) INCREMENTAL HYDROPOWER.—]]

20 [“(A) IN GENERAL.—The term ‘incremental hydropower’ means additional energy
21 generated as a result of efficiency improvements or capacity additions made on or
22 after—]

23 [“(i) January 1, 2006; or]

24 [“(ii) the effective commencement date of an existing applicable State
25 renewable portfolio standard program at a hydroelectric facility that was placed in
26 service before that date.]

27 [“(B) EXCLUSION.—The term ‘incremental hydropower’ does not include additional
28 energy generated as a result of operational changes not directly associated with
29 efficiency improvements or capacity additions.]

30 [“(C) MEASUREMENT AND CERTIFICATION.—Efficiency improvements and capacity
31 additions referred to in subparagraph (B) shall be—]

32 [“(i) measured on the basis of the same water flow information used to
33 determine a historic average annual generation baseline for the hydroelectric
34 facility; and]

35 [“(ii) certified by the Commission.]

36 “(4) LOAD-SERVING ENTITY.—The term ‘load-serving entity’ means any person, any
37 Federal, State, or local agency or instrumentality, or any electric cooperative that delivers

1 electric energy to end-use customers.

2 “(5) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—The term ‘marine and
3 hydrokinetic renewable energy’ has the meaning given the term in section 632 of the
4 Energy Independence and Security Act of 2007 (42 U.S.C. 17211).

5 [“(6) QUALIFIED HYDROPOWER.—]

6 [“(A) IN GENERAL.—The term ‘qualified hydropower’ means—]

7 [“(i) incremental hydropower; and]

8 [“(ii) additions of capacity made on or after January 1, 2006, or the effective
9 commencement date of an existing applicable State renewable portfolio standard
10 program at an existing nonhydroelectric dam, if—]

11 [“(I) the hydroelectric project installed on the nonhydroelectric dam—]

12 [“(aa) is licensed by the Commission; and]

13 [“(bb) meets all other applicable environmental, licensing, and
14 regulatory requirements, including applicable fish passage
15 requirements;]

16 [“(II) the nonhydroelectric dam—]

17 [“(aa) was placed in service before the date of enactment of the [short
18 title];]

19 [“(bb) was operated for flood control, navigation, or water supply
20 purposes; and]

21 [“(cc) did not produce hydroelectric power as of the date of
22 enactment of the [short title]; and]

23 [“(III) the hydroelectric project is operated so that the water surface
24 elevation at any given location and time that would have occurred in the
25 absence of the hydroelectric project is maintained, subject to any license
26 requirements imposed under applicable law that change the water surface
27 elevation for the purpose of improving the environmental quality of the
28 affected waterway, as certified by the Commission.]

29 [“(iii) marine and hydrokinetic renewable energy.]

30 [“(B) STANDARDS.—Nothing in this paragraph or the application of this paragraph
31 shall affect the standards under which the Commission issues licenses for and regulates
32 hydropower projects under part I.]

33 “(7) RENEWABLE FEEDER LINE.—The term ‘renewable feeder line’ means a transmission
34 line that—

35 “(A) operates at a voltage of 100 kilovolts or greater; and

36 “(B) is identified in the applicable high-priority national transmission plan or by the
37 Commission as a facility that is to be developed substantially to facilitate collection or
38 delivery to 1 or more load-serving entities or end-use customers of energy produced by
39 solar energy, wind energy, ocean energy (including, tidal, wave, current, and thermal

energy), geothermal energy, [qualified hydropower,] or biomass technologies.

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of Energy.

“(b) Construction.—

“(1) CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.—

“(A) REQUIREMENT OF CERTIFICATE.—Unless there is in force with respect to a public utility (or person that will be a public utility) upon completion of any proposed construction a certificate of public convenience and necessity issued by the Commission authorizing acts or operation of the public utility or person, the public utility or person shall not—

“(i) construct, acquire, or operate any new high-priority national transmission project; or

“(ii) modify a certificated high-priority national transmission project.

“(B) ELECTIVE COVERAGE.—

“(i) IN GENERAL.—An person or other entity described in clause (ii) may elect, in such manner as the Commission may prescribe, by regulation, to have this subsection apply to a new or pending high-priority national transmission project constructed by the entity or person.

“(ii) PERSON OR OTHER ENTITY.—An person or other entity referred to in clause (i) is—

“(I) any entity described in section 201(f) that proposes to construct a new or pending high-priority national transmission project;

“(II) any public utility (or person who will be a public utility upon completion of proposed construction) that proposes to construct a pending high-priority national transmission project; or

“(III) any entity that proposes to construct a new renewable feeder line that is not a high-priority national transmission project.

“(2) APPLICATION FOR CERTIFICATE.—

“(A) IN GENERAL.—An person or other entity that seeks to operate, construct, acquire, or modify a high-priority national transmission project shall—

“(i) submit to the Commission a written application in such form and containing such information as the Commission may by regulation require; and

“(ii) provide notice of the application to interested parties (including State Commissions) in such manner as the Commission shall by regulation require.

“(B) HEARING.—Upon receipt of an application under this paragraph, the Commission—

“(i) shall provide notice and opportunity to interested persons; and

“(ii) may approve (with or without conditions) or disapprove the application, in accordance with paragraph (3).

1 “(C) TEMPORARY CERTIFICATE.—Notwithstanding subparagraphs (A) and (B), the
2 Commission may—

3 “(i) issue a temporary certificate in a case of an emergency to ensure
4 maintenance of adequate service or to serve particular customers, without notice
5 or hearing, pending the determination on an application for a certificate; and

6 “(ii) by regulation exempt from the requirements of this subsection acts or
7 operations for which the public interest does not require the issuance of a
8 certificate, as determined by the Commission.

9 “(3) GRANT OF CERTIFICATE.—

10 “(A) IN GENERAL.—Except as provided in paragraph (2)(C), a certificate shall be
11 issued to a qualified applicant for the certificate authorizing the whole or partial
12 operation, construction, acquisition, or modification covered by the application, only if
13 the Commission determines that—

14 “(i) the applicant is able and willing—

15 “(I) to do the acts and to perform the service proposed; and

16 “(II) to comply with this Act (including regulations); and

17 “(ii) the proposed operation, construction, acquisition, or modification, to the
18 extent authorized by the certificate, is or will be required by the present or future
19 public convenience and necessity.

20 “(B) TERMS AND CONDITIONS.—The Commission shall have the power to attach to
21 the issuance of a certificate under this paragraph and to the exercise of the rights
22 granted under the certificate such reasonable terms and conditions as the public
23 convenience and necessity may require.

24 “(C) EVALUATION OF ABILITIES OF APPLICANT.—In evaluating the ability of an
25 applicant described in subparagraph (A)(i), the Commission shall consider whether the
26 financial and technical capabilities of the applicant are adequate to support
27 construction and operation of the project proposed in the application.

28 “(D) PUBLIC CONVENIENCE AND NECESSITY.—In making a determination with
29 respect to public convenience and necessity described in subparagraph (A)(ii), the
30 Commission shall—

31 “(i) consider whether the facilities covered by an application are included an
32 Interconnection-wide transmission grid project plan developed pursuant to
33 subsection [(d)] or constitute a portion of a renewable feeder line; and

34 “(ii) conclusively presume that there is a public need for a proposed project that
35 is included in an Interconnection-wide transmission grid project plan developed
36 pursuant to subsection [(d)] or that constitutes all of or a portion of a renewable
37 feeder line.

38 “(4) RIGHT OF EMINENT DOMAIN.—

39 “(A) IN GENERAL.—If any holder of a certificate issued under paragraph (3) cannot
40 acquire by contract, or is unable to agree with the owner of property on the

1 compensation to be paid for, the necessary right-of-way to construct, operate, and
2 maintain the project to which the certificate relates, and the necessary land or other
3 property necessary to the proper operation of the project, the holder may acquire the
4 right-of-way by the exercise of the right of eminent domain in—

5 “(i) the United States district court for the district in which the property is
6 located; or

7 “(ii) a State court.

8 “(B) PRACTICE AND PROCEDURE.—The practice and procedure for any action or
9 proceeding described in subparagraph (A) in a United States district court shall
10 conform, to the maximum extent practicable, to the practice and procedure for similar
11 actions or proceedings in the courts of the State in which the property is located.

12 “(5) ENVIRONMENTAL REVIEWS.—

13 “(A) IN GENERAL.—In the case of any project for which a construction permit is
14 granted under paragraph (1), the Commission [the Secretary of the Interior?] shall—

15 “(i) serve as the lead agency for purposes of coordinating any Federal
16 authorizations and environmental reviews or analyses required for the project,
17 including those required under the National Environmental Policy Act of 1969
18 (42 U.S.C. 4321 et seq.); and

19 “(ii) in consultation with other affected agencies, prepare a single
20 environmental review document that will be used as the basis for all decisions
21 under Federal law relating to the proposed project, in accordance with subsection
22 [(g)], including siting constraints and mitigation measures.

23 “(B) MEMORANDUM OF UNDERSTANDING.—

24 “(i) IN GENERAL.—The Commission and affected agencies shall enter into a
25 memorandum of understanding, to carry out this paragraph, including a schedule
26 for environmental review and a budget necessary to comply with the schedule.

27 “(ii) BUDGET.—The Commission and affected agencies shall authorize funds to
28 meet the budget required under clause (i).

29 [“(6) DEADLINE FOR DECISIONS AND REVIEWS.—]

30 [“(A) IN GENERAL.—The Commission shall ensure that, once an application has
31 been submitted with such data as the Commission determines to be necessary, all
32 permit decisions and related environmental reviews under applicable Federal laws shall
33 be completed not later than 1 year after the date of the determination.]

34 [“(B) APPEAL.—If any agency has denied a Federal authorization required for a
35 certified project under this Act or has failed to act within the deadline established
36 under subparagraph (A) for deciding whether to issue the authorization, the applicant
37 or any State in which the facility would be located may file an appeal to the President,
38 who shall, in consultation with the affected agency, review the denial or failure to take
39 action on the pending application.”;]

40 (2) in subsections (d) and (e), by striking “permit” each place it appears and inserting

1 “certificate”;

2 (3) in subsection (f)(1), by striking “subsection (e)” and inserting “subsection (d)”;

3 (4) by striking subsection (i);

4 (5) in subsection (j)(2), by striking “(h)(6)” and inserting “(g)(6)”;

5 (6) by redesignating subsections (d), (e), (f), (g), (h), (j), and (k) as subsections (c), (d),
6 (e), (f), (g), (n), and (o), respectively; and

7 (7) by inserting after subsection (g) (as redesignated by paragraph (6)) the following:

8 “(h) Restricted Areas.—In granting a construction permit under subsection (a), the
9 Commission shall—

10 “(1) avoid granting a construction permit for areas described in section 232(a)(2); and

11 “(2) consider and, to the maximum extent practicable, select alternative routes to avoid
12 those areas.

13 “(i) Plans for National Interstate Transmission System.—

14 “(1) IN GENERAL.—To achieve Interconnection-wide coordination of planning for the
15 interstate electric transmission grid, not later than 60 days after the date of enactment of the
16 [short title], the Commission shall issue a request for applications from each
17 Interconnection area for 1 or more organizations to be certified as the regional planning
18 entity for the Interconnection area.

19 “(2) CONTENTS OF APPLICATION.—The application shall include proposals for provisions
20 for an open, inclusive, transparent and nondiscriminatory planning process that—

21 “(A) includes consultation with affected States within the Interconnection area;

22 “(B) builds on planning undertaken by States, Federal transmitting utilities, regional
23 transmission organizations, independent system operators, utilities, regional reliability
24 entities, and other parties;

25 “(C) takes account of corridor designation work carried out by Federal land
26 agencies, the Department of Energy, and other parties;

27 “(D) solicits input from transmission owners, regional transmission organizations,
28 independent system operators, States, generator owners, prospective developers of new
29 transmission and generation resources, regional entities, Federal land and resource
30 management agencies, environmental protection and land, water, and wildlife
31 conservation groups, and other interested parties; and

32 “(E) includes an interim process to expeditiously evaluate whether new renewable
33 feeder lines should be added to the transmission grid project plan.

34 “(3) DESIGNATION.—Not later than 120 days after the date of enactment of the [short
35 title], the Commission shall designate 1 or more appropriate organizations to serve as the
36 regional planning entity to represent the Interconnection area under this section.

37 “(4) PLAN.—

38 “(A) IN GENERAL.—Not later than 1 year after the date of the deadline for

designations under this section, each approved regional planning entity in each Interconnection shall submit to the Commission an Interconnection-wide transmission grid project plan.

“(B) APPROVAL; MODIFICATION.—The Commission may approve and modify the plan as necessary to ensure that the plan meets the requirements of this section.

“(5) DUTIES.—

“(A) IN GENERAL.—The regional planning entities established under paragraph (1) shall—

“(i) undertake centralized Interconnection-wide transmission planning with respect to high-priority national transmission projects;

“(ii) develop plans for the development and improvement of high-priority national transmission projects into a national high-capacity transmission grid that takes into consideration—

“(I) the location of load centers;

“(II) the location of generation and potential generation development;

“(III) existing and potential demand response and energy efficiency programs; and

“(IV) the plans of regional transmission organizations, independent system operators, State authorities, transmission owners, and others in the region.

“(B) PLANNING.—Planning for the addition of high-priority national transmission lines described in subparagraph (A) shall be guided by the goal of maximizing the net benefits of the electricity system, taking into consideration—

“(i) support for the development of new renewable generation capacity, including renewable generation located distant from load centers;

“(ii) opportunities for reduced emissions from regional power production;

“(iii) cost savings resulting from—

“(I) reduced transmission congestion;

“(II) enhanced opportunities for intraregional and interregional electricity trades;

“(III) reduced line losses; or

“(IV) generation resource-sharing;

“(iv) enhanced fuel diversity;

“(v) reliability benefits, including satisfying reliability standards and guidelines for resource adequacy and system security;

“(vi) diversification of risk relating to events affecting fuel supply or generating resources in a particular region;

“(vii) enhancement of competition in electricity markets and mitigation of

market power;

“(viii) ability to collocate facilities on existing rights-of-way; and

“(ix) competing land use priorities.

“(6) FAILURE TO SUBMIT PLAN.—

“(A) IN GENERAL.—If a State or regional planning entity in an Interconnection does not participate in a timely manner in an Interconnection-wide transmission grid project planning process in accordance with this section, or if such a planning process is established but fails to result in the submission by the regional planning entity of the components of the State or region for an Interconnection-wide transmission grid project plan by the date specified in paragraph (4), the Commission shall develop through a rulemaking an Interconnection-wide transmission grid project plan on behalf of the 1 or more states or regional planning entity in the interconnection.

“(B) PARTIAL PARTICIPATION.—If a significant number of, but not all, States in an interconnection have participated in a planning process and the regional planning entity submits a plan to the Commission for the participating States, the Commission may give appropriate weight to the proposal in the rulemaking proceeding of the Commission.

“(C) COMMENTS.—In developing a plan under this section, the Commission shall consider comments provided by—

“(i) the Secretary;

“(ii) Federal transmitting utilities;

“(iii) the Secretary of the Interior;

“(iv) regional transmission organizations;

“(v) the electric reliability organization;

“(vi) regional entities; and

“(vii) municipal and cooperative entities.

“(D) DEADLINE.—A final rule shall be promulgated under subparagraph (A) not later than 1 year after the date on which the Commission determines that the regional planning entity has failed to submit, or that a State has failed to participate in, an Interconnection-wide transmission project plan on a timely basis.

“(7) EVALUATION AND RECOMMENDATIONS.—The Commission shall—

“(A) periodically evaluate whether high-priority national transmission grid projects to enable the delivery of renewable energy are being constructed in accordance with the Interconnection-wide transmission grid project plan for both the Western and Eastern Interconnection areas;

“(B) take any necessary actions to address any identified obstacles to investment, siting, and construction of projects identified as needed under an Interconnection-wide plan; and

“(C) not later than 2 years after the date of enactment of the [short title], submit to

Congress recommendations for any further actions or authority needed to ensure the effective and timely development of high-priority national transmission projects.

“(8) RECOVERY OF COSTS ASSOCIATED WITH INTERCONNECTION-WIDE GREEN TRANSMISSION GRID PROJECT PLANNING.—

“(A) IN GENERAL.—A regional planning entity and a State shall be permitted to recover prudently incurred costs to carry out the Interconnection-wide planning activities under their jurisdiction required under this subsection pursuant to a Federal transmission surcharge that will be established by the Commission for the purposes of carrying out this section.

“(B) SURCHARGE.—A regional planning entity, in consultation with States in an Interconnection, shall—

“(i) establish the Federal transmission surcharge based on a formula rate that is submitted to the Commission for approval; and

“(ii) adjust the formula and surcharge on an annual basis.

“(C) COST RESPONSIBILITY.—Cost responsibility under the surcharge shall be assigned based on energy usage to all load-serving entities within the United States portion of the Eastern and Western Interconnections.

“(D) LIMITATION.—The total amount of surcharges that may be imposed or collected nationally under this paragraph shall not exceed \$80,000,000 in any calendar year.

“(E) DISTRIBUTION.—The Secretary shall distribute the funds received pursuant to a surcharge established by the Commission under this section on an equitable basis among States and planning entities, if the Governor of the receiving State—

“(i) in the case of the first year of distribution, certifies to the Secretary that the State will participate in an Interconnection-wide green transmission grid project planning process; and

“(ii) in the case of the second and subsequent years of distribution—

“(I) is part of an Interconnection-wide planning process that submits to the Commission timely Interconnection-wide green transmission grid project plans under this section; and

“(II) certifies annually to the Secretary that the planning entities are able to effectively represent a wide spectrum of stakeholders, including organizations established for consumer protection and for the protection and conservation of land, fish, and wildlife.

“(9) APPLICABILITY.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the transmission plans developed and approved under this subsection may apply to all users, owners, and operators of the bulk-power system within the United States portion of the Eastern and Western Interconnections, including entities described in section 201(f).

“(B) EXCLUSIONS.—This subsection does not apply to the State of Alaska or Hawaii

1 or to the ERCOT, unless the State or ERCOT voluntarily elects to participate in the
2 planning process, and to be responsible for a pro rata portion of the Federal
3 transmission surcharge imposed under this subsection.

4 “(C) PROJECT DEVELOPERS.—Nothing in this subsection prevents a project
5 developer from carrying out a transmission project to enable renewable development if
6 the project developer assumes all of the risk and cost of the proposed project.

7 “(j) Cost Allocation.—

8 “(1) IN GENERAL.—As part of an Interconnection-wide transmission grid project plan
9 submitted under this section, the regional planning entity, after consultation with affected
10 State utility commissions, may file with the Commission a cost allocation plan for sharing
11 the costs of transmission grid projects that are identified and built pursuant to an
12 Interconnection-wide transmission project plan.

13 “(2) APPROVAL.—Not later than 90 days after the date of filing, the Commission shall
14 approve a cost allocation plan proposed under paragraph (1) unless the Commission
15 determines that—

16 “(A) taking into account the users of the transmission facilities, the plan will result
17 in rates that are not just and reasonable and unduly discriminatory or preferential;

18 [“(B) the plan would unduly inhibit the development of renewable energy electric
19 generation projects; or]

20 “(C) the plan would not allow the transmission provider providing service over the
21 facilities, or the entity constructing or financing the project, as appropriate, the
22 opportunity to recover prudently incurred costs, including a reasonable return on its
23 investment, associated with the transmission facilities the transmission provider has
24 committed to build pursuant to the Interconnection-wide transmission plan.

25 “(3) FAILURE TO SUBMIT A COST ALLOCATION PLAN.—

26 “(A) IN GENERAL.—If a regional planning entity is unable, for whatever reason, to
27 develop and propose an acceptable cost allocation plan at the time it files an
28 Interconnection-wide transmission grid project plan, the Commission shall institute, on
29 the motion of the Commission, a proceeding to initially allocate the costs of new
30 transmission facilities built pursuant to an Interconnection-wide transmission project
31 plan.

32 “(B) COST ALLOCATION.—The Commission shall allocate the costs—

33 “(i) broadly to all load-serving entities in the Interconnection; or

34 “(ii) to load-serving entities within a part of the Interconnection for high-
35 priority transmission grid projects.

36 “(4) COST ALLOCATION RATE FILINGS.—If a cost allocation plan is approved by the
37 Commission in accordance with this section—

38 “(A) any public utility that has rates that are affected by the approved cost allocation
39 plan shall file the allocation plan with the Commission pursuant to section 205; and

40 “(B) the cost allocation plan shall be presumed lawful under section 205 on filing,

1 without notice or further opportunity for comment or hearing.

2 “(k) Applicability.—

3 “(1) IN GENERAL.—Except as provided in paragraph (3), the authority of the Commission
4 under this section to approve transmission plans and to allocate costs incurred pursuant to
5 the plans applies to all transmission providers, generators, and users, owners, and operators
6 of the power system within the Eastern and Western Interconnections of the United States,
7 including entities described in section 201(f).

8 “(2) REGIONAL PLANNING ENTITIES.—The Commission shall have authority over regional
9 planning entities to the extent necessary to carry out this section and section 232.

10 “(3) EXCLUSIONS.—This section does not apply in the State of Alaska or Hawaii or to the
11 ERCOT, unless the State or ERCOT voluntarily elects to participate in a cost allocation
12 plan under this section.

13 “(l) Long-Term Transmission Rights to Support New Generation Development.—It is the
14 policy of the United States that long-term transmission rights, of firmness and duration sufficient
15 to support generation investment (including project financing for new generation projects), shall
16 be available under appropriate terms and conditions to entities seeking to construct new
17 generation facilities using solar energy, wind energy, marine and hydrokinetic renewable energy,
18 geothermal energy, [qualified hydropower,] or biomass technologies.

19 “(m) Regulations.—Not later than 1 year after the date of enactment of the [short title], the
20 Commission shall promulgate or modify such regulations as the Commission determines to be
21 necessary to carry out this section.”.
22